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THIS DISPOSITION IS NOT CITABLE AS PRECEDENT OF THE T.T.A.B.

Paper No. 13
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UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re Senior Technologies, Inc.

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Serial No. 75/508,524

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Request for Reconsideration

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Vincent L. Carney for applicant.

Susan C. Hayash, Trademark Examining Attorney, Law Office 110 (Chris A.F. Pedersen, Managing Attorney).

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Before Quinn, Wendel and Drost, Administrative Trademark Judges.

Opinion by Quinn, Administrative Trademark Judge:

The Board, in a decision dated February 27, 2001, affirmed the likelihood of confusion refusal to register under Section 2(d).

Applicant has filed a request for reconsideration.[1] Applicant advances three main grounds for reconsideration:

[1] The Board never received applicant's original request. Applicant, on June 12, 2001, forwarded by facsimile transmission a copy of the request. In view of the certificate of mailing and the stamped return receipt, the request for reconsideration is considered timely.

(1)factors in applicant's favor other than the two key factors of similarity between the marks and similarity between the goods should be given more weight; (2)applicant's mark was improperly dissected rather than being considered as a whole; and (3)the dominant portion TABS of applicant's mark TABS SELECT was not properly considered as the dominant part of the mark but merely as a suggestive part of the mark whereas it is not suggestive or only slightly suggestive.

The request for reconsideration is not well taken.

First, applicant argues that the Board ignored several of the du Pont factors that are relevant in this case. Applicant contends that there are different trade channels for the products. As we pointed out in our original decision, however, the identifications of goods do not include any limitations. See: Octocom Systems Inc. v. Houston Computer Services Inc., 918 F.2d 937, 16 USPQ2d 1783, 1788 Fed. Cir. 1990). Further, there is no evidence of record supporting any distinctions in trade channels.

We addressed the sophistication of purchasers argument and acknowledged the reasonableness of applicant's assertion that medical professionals are prone to be sophisticated purchasers of medical equipment. This sophistication, however, would not ensure against

likelihood of confusion given the similarity between the marks and the close relatedness of the goods.

The statement of no actual confusion is without any evidentiary support. Although the absence of actual confusion would weigh in applicant's favor, applicant has failed to provide any specifics regarding the extent of use by applicant or registrant of their respective marks. Thus, there is no way to assess whether there has been a meaningful opportunity for confusion to occur in the marketplace.

As to applicant's second point, applicant's mark was not improperly dissected when it was compared with the registered mark. Rather, we considered applicant's mark TABS SELECT in its entirety when we compared it with the cited mark SELECT.

With respect to applicant's third point, we stand by our original assessment that the terms comprising applicant's mark, including the term "tabs" per se, are suggestive. Given the dictionary meaning cited in our decision, it is surprising that applicant continues to deny the suggestive of the term when it is applied to a remote patient position monitor. When considered as a whole, applicant's mark TABS SELECT is sufficiently similar in

terms of sound, appearance and meaning to registrant's mark SELECT that confusion is likely to occur.

Lastly, applicant's request for a remand to supplement the record is denied. Such request at this late juncture is manifestly untimely.

In conclusion, we remain of the view that purchasers familiar with registrant's "patient monitors" sold under the mark SELECT would be likely to believe, upon encountering applicant's mark TABS SELECT for "remote patient position monitors," that the goods originated with or are somehow associated with or sponsored by the same entity.

The request for reconsideration is denied, and the decision dated February 27, 2001 stands.